

13BT-CV00900

Electronically Filed - Butler County - Circuit Court - May 08, 2013 - 04:42 PM CDT

IN THE CIRCUIT COURT OF BUTLER COUNTY, MISSOURI

OZARK PHYSICAL THERAPY, LLP,
a Missouri Limited Liability Partnership,
OZARK PHYSICAL MEDICINE, LLC,
a Missouri Limited Liability Company, and

AUSTIN TINSLEY,

Plaintiffs,

v.

HARTFORD CASUALTY
INSURANCE COMPANY,

Defendant.

Serve: AMCO Insurance Company
c/o Director of Insurance
301 W. High Street
Room 530
Jefferson City, MO 65101

Case No. _____

PETITION

COUNT I -- DECLARATORY JUDGMENT

COMES NOW, Plaintiff, Ozark Physical Therapy, LLP, a Missouri Limited Liability Partnership, Ozark Physical Medicine, LLC, a Missouri Limited Liability Company, and Austin Tinsley by and through their attorney, John R. Schneider of Johnson & Schneider, L.L.C., and for Count I of their Petition for Declaratory Judgment against the Defendant, Hartford Insurance Company, states as follows:

1. That Plaintiff, Ozark Physical Therapy, LLP, a Missouri Limited Liability Partnership, with its principle place of business located in Poplar Bluff, Butler County, Missouri, and at all times relevant to this Petition had insurance coverage through Defendant, Hartford Casualty Insurance Company.

2. That Plaintiff, Ozark Physical Medicine, LLC, a Missouri Limited Liability



Company, with its principle place of business located in Poplar Bluff, Butler County, Missouri, and at all times relevant to this Petition had insurance coverage through Defendant, Hartford Casualty Insurance Company.

3. Austin Tinsley, has an ownership interest in Ozark Physical Therapy, LLP and Ozark Physical Medicine, LLC was an insured of Defendant and incurred losses as a result of the damages suffered as set forth herein.

4. That Defendant, Hartford Casualty Insurance Company, hereinafter referred to as "Hartford", is, and at all times material hereto was, an insurance company doing business in the State of Missouri and issued a policy of insurance to Plaintiffs that was in effect at the time of the loss sustained by Plaintiffs as set forth herein. A copy of the policy declarations is attached hereto and made hereof marked Exhibit "1"

5. That Plaintiffs purchased from Defendant and Defendant issued a policy of insurance to Plaintiffs covering structure and building losses to real property located in Butler County, Missouri and owned by Plaintiffs. Such insurance also covered other losses as well that Plaintiff's seek compensation for.

6. That on or about February, 2009, storms, including ice, freezing rain and wind, occurred in Butler County, Missouri, which resulted in severe damages to the building and structure owned by Plaintiffs and covered by the insurance provided by Defendant to Plaintiffs.

7. The policy of insurance underwritten by Defendant was in effect on the date of the incident and provides coverage for the damages sustained as a result of the storms, ice and winds that occurred.

8. That on or about February, 2009, Plaintiffs sustained damages which Plaintiff's contend fall within the terms of the coverage of the insurance policy issued by Defendant to Plaintiffs, namely property/building structure damage, loss of income/rent, and other damages, both to the real and personal property, and other economic damages that are covered under the policy of insurance in effect at the time of the loss.

9. Plaintiffs filed a formal claim and made a demand upon Hartford for payment of such loss under the policy of insurance, which has been denied as of March 19, 2009.

10. Defendant has claimed certain exclusions apply to Plaintiffs' claim, which Plaintiff disagrees with.

11. A justifiable controversy exists between the parties concerning the respective rights under the Policy as follows:

(a) Plaintiffs contend that, pursuant to the policy of insurance issued, their losses as set forth herein and as made a part of their claim to Defendant, are covered under the Policy;

(b) Plaintiffs contend the policy of insurance was in effect at the time of their losses and such losses should be covered accordingly; and

(c) Whether the claimed exclusions by Defendant are applicable to Plaintiffs' claims of loss under the insurance policy in effect and issued by Defendant.

12. By reason of the foregoing, Declaratory Judgment is both necessary and proper in order to set forth and determine the rights, obligations and liabilities that exist between the parties in connection with the aforementioned policy of insurance.

13. Plaintiffs are requesting and are entitled, pursuant to Missouri law, to

recover reasonable attorney fees and costs herein incurred due to the fact of having to bring a Declaratory Judgment action to determine benefits under an insurance policy for Plaintiffs and to cover losses sustained by both Plaintiffs.

WHEREFORE, Plaintiffs respectfully request this Court enter Judgment as follows:

A. Declaring that the aforementioned policy of insurance between Defendant and Plaintiffs, covers certain losses sustained by Plaintiffs and more particularly the losses to the building, structures, income/rent loss and other damages all of which were provided for under the insurance policy issued to Plaintiffs by Defendant.

B. Declaring the rights and other legal obligations of the Plaintiffs and Defendant arising under the aforementioned Policy.

C. Awarding Plaintiffs their costs and reasonable attorney fees incurred in having to bring a Declaratory Judgment action.

D. Awarding such other and further relief as this Court determines just and proper under the circumstances.

COUNT II – BREACH OF CONTRACT

COMES NOW, Plaintiff, Ozark Physical Therapy, LLP, a Missouri Limited Liability Partnership, Ozark Physical Medicine, LLC, a Missouri Limited Liability Company, and Austin Tinsley, by and through their attorney, John R. Schneider of Johnson & Schneider, L.L.C., and for Count II of their Petition for Breach of Contract against the Defendant, Hartford Casualty Insurance Company, states as follows:

1. That Plaintiff, Ozark Physical Therapy, LLP, a Missouri Limited Liability Partnership, with its principle place of business located in Poplar Bluff, Butler County,

Missouri, and at all times relevant to this Petition had insurance coverage through Defendant, Hartford Casualty Insurance Company.

2. That Plaintiff, Ozark Physical Medicine, LLC, a Missouri Limited Liability Company, with its principle place of business located in Poplar Bluff, Butler County, Missouri, and at all times relevant to this Petition had insurance coverage through Defendant, Hartford Casualty Insurance Company.

3. Austin Tinsley, has an ownership interest in Ozark Physical Therapy, LLP and Ozark Physical Medicine, LLC was an insured of Defendant and incurred losses as a result of the damages suffered as set forth herein..

4. That Defendant, Hartford Casualty Insurance Company, hereinafter referred to as "Hartford", is, and at all times material hereto was, an insurance company doing business in the State of Missouri and issued policies of insurance to Plaintiffs that were in effect at the time of the loss sustained by Plaintiffs as set forth herein. A copy of the policy declarations is attached hereto and made part hereof marked Exhibit "1".

5. That Plaintiffs purchased from Defendant and Defendant issued a policy of insurance to Plaintiffs covering structure and building losses to real property located in Butler County, Missouri and owned by Plaintiffs.

6. That on or about February, 2009, storms, including ice, freezing rain and wind, occurred in Butler County, Missouri, which resulted in severe damages to the building and structure owned by Plaintiffs and covered by the insurance provided by Defendant to Plaintiffs.

7. The policy of insurance underwritten by Defendant was in effect on the date of the incident and provides coverage for the damages sustained as a result of the

storms, ice and winds that occurred.

8. That on or about February, 2009, Plaintiffs sustained damages which Plaintiffs contend to fall within the terms of the coverage of the insurance policy issued by Defendant to Plaintiffs, namely property/building structure damage, loss of income/rent, and other damages, both to the real and personal property, and other economic damages that are covered under the policy of insurance.

9. Plaintiffs filed a formal claim and made a demand upon Hartford for payment of such loss under the policy of insurance, which has been denied as of March 19, 2009.

10. That as a proximate result of Defendant's breach of the insurance policy, Plaintiffs have sustained injuries, losses and damages as set forth herein.

WHEREFORE, Plaintiffs respectfully request this Court enter Judgment against Defendant for all damages entitled under the policy of insurance provided to Plaintiffs by Defendant, which are in excess of \$25,000.00, for Plaintiffs' cost of suit and for such other and further relief as this Court determines just and proper in the circumstances.

JOHN R. SCHNEIDER
JOHNSON & SCHNEIDER, L.L.C.
212 North Main Street
Cape Girardeau, MO 63701
Telephone: 573-335-3300
Facsimile: 573-335-1978
www.johnsonschneider.com

JOHNSON & SCHNEIDER, L.L.C.

JOHN R. SCHNEIDER # 54194
Attorney for Plaintiffs

33 This Spectrum Policy consists of the Declarations, Coverage Forms, Common Policy Conditions and any
 95 other Forms and Endorsements issued to be a part of the Policy. This insurance is provided by the stock
 TY insurance company of The Hartford Insurance Group shown below.

SBA

INSURER: HARTFORD CASUALTY INSURANCE COMPANY
 HARTFORD PLAZA, HARTFORD, CT 06115
 COMPANY CODE: 3

Policy Number: 84 SBA TY9533 DV

SPECTRUM POLICY DECLARATIONS

COPY



18910

60103556ALt820011*

Named Insured and Mailing Address: OZARK PHYSICAL MEDICINE
 (No., Street, Town, State, Zip Code) SEE FORM IH 12 00
 2725 N WESTWOOD
 POPLAR BLUFF MO 63901

Policy Period: From 09/06/08 To 09/06/09 1 YEAR
 12:01 a.m., Standard time at your mailing address shown above. Exception: 12 noon in New Hampshire.

Name of Agent/Broker: AFFILIATED INS AGENCIES INC/PHS
 Code: 530897

Previous Policy Number: 84 SBA TY9533

Named Insured is: LIMITED LIAB CORP

Audit Period: NON-AUDITABLE

Type of Property Coverage: SPECIAL

Insurance Provided: In return for the payment of the premium and subject to all of the terms of this policy, we agree with you to provide insurance as stated in this policy.

TOTAL ANNUAL PREMIUM IS: \$4,626

Countersigned by

Margie K. Pope

Authorized Representative

06/25/08
 Date



Form SS 00 02 12 06
 Process Date: 06/25/08

Page 001 (CONTINUED ON NEXT PAGE)

Policy Expiration Date: 09/06/09

PRODUCER COPY

SPECTRUM POLICY DECLARATIONS (Continued)

POLICY NUMBER: 84 SBA TY9533

Location(s), Building(s), Business of Named Insured and Schedule of Coverages for Premises as designated by Number below.

Location: 001 Building: 001

**2725 N WESTWOOD
POPLAR BLUFF MO 63901**

**Description of Business: LESSORS RISK
MEDICAL OFFICE - OTHER - BUILDING OWNER OCCUPIES LESS THAN 75%**

Deductible: \$1,000 PER OCCURRENCE

BUILDING AND BUSINESS PERSONAL PROPERTY LIMITS OF INSURANCE

BUILDING

REPLACEMENT COST	\$ 1,449,000
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BUSINESS PERSONAL PROPERTY

REPLACEMENT COST	NO COVERAGE
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PERSONAL PROPERTY OF OTHERS

REPLACEMENT COST	NO COVERAGE
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MONEY AND SECURITIES

INSIDE THE PREMISES	\$ 10,000
OUTSIDE THE PREMISES	\$ 5,000

SPECTRUM POLICY DECLARATIONS (Continued)

POLICY NUMBER: 84 SBA TY9533

Location(s), Building(s), Business of Named Insured and Schedule of Coverages for Premises as designated by Number below.

Location: 001 Building: 001

**PROPERTY OPTIONAL COVERAGES APPLICABLE LIMITS OF INSURANCE
TO THIS LOCATION**

BUILDING STRETCH
FORM: SS 04 52
THIS FORM INCLUDES MANY ADDITIONAL
COVERAGES AND EXTENSIONS OF
COVERAGES. A SUMMARY OF THE
COVERAGE LIMITS IS ATTACHED.

LIMITED FUNGI, BACTERIA OR VIRUS \$ 50,000
COVERAGE:

FORM SS 40 93
THIS IS THE MAXIMUM AMOUNT OF
INSURANCE FOR THIS COVERAGE,
SUBJECT TO ALL PROPERTY LIMITS
FOUND ELSEWHERE ON THIS
DECLARATION.
INCLUDING BUSINESS INCOME AND EXTRA
EXPENSE COVERAGE FOR:

30 DAYS

69810 6010EE56A1B820011*



SPECTRUM POLICY DECLARATIONS (Continued)

POLICY NUMBER: 84 SBA TY9533

Location(s), Building(s), Business of Named Insured and Schedule of Coverages for Premises as designated by Number below.

Location: 002 Building: 001

2720 OAK GROVE ROAD
POPLAR BLUFF MO 63901

Description of Business: LESSORS RISK
BUILDING OWNER - LESSORS RISK ONLY - RESTAURANT OCCUPANCY

Deductible: \$1,000 PER OCCURRENCE

BUILDING AND BUSINESS PERSONAL PROPERTY LIMITS OF INSURANCE

BUILDING

REPLACEMENT COST	\$ 476,100
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BUSINESS PERSONAL PROPERTY

REPLACEMENT COST	NO COVERAGE
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PERSONAL PROPERTY OF OTHERS

REPLACEMENT COST	NO COVERAGE
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MONEY AND SECURITIES

INSIDE THE PREMISES	\$ 10,000
OUTSIDE THE PREMISES	\$ 5,000

SPECTRUM POLICY DECLARATIONS (Continued)

POLICY NUMBER: 84 SBA TY9533

Location(s), Building(s), Business of Named Insured and Schedule of Coverages for Premises as designated by Number below.

Location: 002 **Building:** 001

**PROPERTY OPTIONAL COVERAGES APPLICABLE LIMITS OF INSURANCE
TO THIS LOCATION**

BUILDING STRETCH

FORM: SS 04 52

**THIS FORM INCLUDES MANY ADDITIONAL
COVERAGES AND EXTENSIONS OF
COVERAGES. A SUMMARY OF THE
COVERAGE LIMITS IS ATTACHED.**

**LIMITED FUNGI, BACTERIA OR VIRUS
COVERAGE:**

\$ 50,000

FORM SS 40 93

**THIS IS THE MAXIMUM AMOUNT OF
INSURANCE FOR THIS COVERAGE,
SUBJECT TO ALL PROPERTY LIMITS
FOUND ELSEWHERE ON THIS
DECLARATION.
INCLUDING BUSINESS INCOME AND EXTRA
EXPENSE COVERAGE FOR:**

30 DAYS

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SPECTRUM POLICY DECLARATIONS (Continued)

POLICY NUMBER: 84 SBA TY9533

**PROPERTY OPTIONAL COVERAGES APPLICABLE LIMITS OF INSURANCE
TO ALL LOCATIONS**

**BUSINESS INCOME AND EXTRA EXPENSE
COVERAGE** 12 MONTHS ACTUAL LOSS SUSTAINED
**COVERAGE INCLUDES THE FOLLOWING
COVERAGE EXTENSIONS:**

ACTION OF CIVIL AUTHORITY: 30 DAYS
EXTENDED BUSINESS INCOME: 30 CONSECUTIVE DAYS

**EQUIPMENT BREAKDOWN COVERAGE
COVERAGE FOR DIRECT PHYSICAL LOSS
DUE TO:
MECHANICAL BREAKDOWN,
ARTIFICIALLY GENERATED CURRENT
AND STEAM EXPLOSION**

**THIS ADDITIONAL COVERAGE INCLUDES
THE FOLLOWING EXTENSIONS**

HAZARDOUS SUBSTANCES \$ 50,000
EXPEDITING EXPENSES \$ 50,000

**MECHANICAL BREAKDOWN COVERAGE ONLY
APPLIES WHEN BUILDING OR BUSINESS
PERSONAL PROPERTY IS SELECTED ON
THE POLICY**

IDENTITY RECOVERY COVERAGE \$ 15,000
FORM SS 41 12

SPECTRUM POLICY DECLARATIONS (Continued)

POLICY NUMBER: 84 SBA TY9533

BUSINESS LIABILITY	LIMITS OF INSURANCE
LIABILITY AND MEDICAL EXPENSES	\$2,000,000
MEDICAL EXPENSES - ANY ONE PERSON	\$ 10,000
PERSONAL AND ADVERTISING INJURY	\$2,000,000
DAMAGES TO PREMISES RENTED TO YOU ANY ONE PREMISES	\$ 300,000
AGGREGATE LIMITS	
PRODUCTS-COMPLETED OPERATIONS	\$4,000,000
GENERAL AGGREGATE	\$4,000,000
EMPLOYMENT PRACTICES LIABILITY COVERAGE: FORM SS 09 50	
EACH CLAIM LIMIT	\$ 5,000
DEDUCTIBLE - EACH CLAIM LIMIT NOT APPLICABLE	
AGGREGATE LIMIT	\$ 5,000
RETROACTIVE DATE: 09062007	

This Employment Practices Liability Coverage contains claims made coverage. Except as may be otherwise provided herein, specified coverages of this insurance are limited generally to liability for injuries for which claims are first made against the insured while the insurance is in force. Please read and review the insurance carefully and discuss the coverage with your Hartford Agent or Broker.

The Limits of Insurance stated in this Declarations will be reduced, and may be completely exhausted, by the payment of "defense expense" and, in such event, The Company will not be obligated to pay any further "defense expense" or sums which the insured is or may become legally obligated to pay as "damages".

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SPECTRUM POLICY DECLARATIONS (Continued)

POLICY NUMBER: 84 SBA TY9533

Form Numbers of Forms and Endorsements that apply:

SS 00 01 04 93	SS 00 05 12 06	SS 00 07 07 05	SS 00 08 04 05
SS 84 31 09 07	SS 01 07 12 07	SS 04 15 07 05	SS 04 19 07 05
SS 04 44 07 05	SS 04 52 09 07	SS 40 18 07 05	SS 40 93 07 05
SS 41 12 12 07	IH 10 01 09 86	SS 05 47 09 01	SS 50 57 04 05
SS 09 10 07 01	SS 09 42 07 99	SS 09 50 07 01	SS 50 19 01 08
SS 38 25 12 07	SS 38 66 04 07	SS 83 76 01 08	
IH 12 00 11 85	NAMED INSURED		

630 631 63105 N2-68

4042130920-164322

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63105

RETURN SERVICE REQUESTED

PRESENT FIRST-CLASS MAIL
US POSTAGE PAID
Jefferson City, MO
PERMIT # 89

MISSOURI DEPARTMENT OF INSURANCE, FINANCIAL
INSTITUTIONS AND PROFESSIONAL REGISTRATION

PO BOX 690

JEFFERSON CITY MO 65102-0690

MO 375-1796 (8-06)

FIRST CLASS MAIL

HARTFORD CASUALTY INSURANCE CO
CT CORPORATION SYSTEM
120 SOUTH CENTRAL AVE, SUITE 400
CLAYTON, MO 63105